Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No. _____

In The

Supreme Court of the United States

LESLIE FITZGERALD, ELIZABETH HARLING AND CHARLES HUGGINS,

Petitioners,

VERSUS

RICHARD STALDER, INDIVIDUALLY, AND IN HIS CAPACITY AS SECRETARY, LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS, ET AL.,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of The State Of Louisiana

PETITION FOR WRIT OF CERTIORARI

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35 pp

QUESTION PRESENTED

Are the local taxing authorities in Louisiana violating the Commerce Clause of the Constitution and the Equal Protection Clause of the Fourteenth Amendment by enforcing their use taxes only against persons who move into their respective jurisdictions from other States, without also enforcing these taxes against current Louisiana residents who move into the same jurisdictions, but from elsewhere in Louisiana?

PARTIES

The parties to this proceeding are the Petitioners, Leslie Fitzgerald, Elizabeth Harling, and Charles Huggins, who seek to be appointed as representatives of a class of all similarly situated persons, and the Respondents, Richard Stalder, Kay Covington, Edward Fitch, The Caddo Parish School Board, The Caddo Parish Sales Tax District No. 1, The Caddo Parish Law Enforcement District, The City of Shreveport, Jerry McWherter, The Natchitoches Parish School Board, The Natchitoches Parish Police Jury, and The Village of Natchez, who the Petitioners seek to have appointed as representatives of a class of all similarly situated taxing authorities.

TABLE OF CONTENTS

Page

QUESTION PRESENTED..... i

PARTIES ii

TABLE OF AUTHORITIES..... iv

OPINIONS BELOW..... 1

JURISDICTION..... 1

CONSTITUTIONAL PROVISIONS AND STATUTES... 1

STATEMENT OF THE CASE..... 2

REASONS FOR GRANTING THE WRIT 3

CONCLUSION 13

APPENDIX A – Decision of the Supreme Court of Louisiana.....App. 1

APPENDIX B – Decision of the Louisiana Court of Appeal for the First Circuit.....App. 3

APPENDIX C – Decision of the Nineteenth Judicial District Court, State of Louisiana, Parish of East Baton Rouge .....App. 8

APPENDIX D – Sections 2.01 and 5.03 excerpted from the Natchitoches Parish School Board Sales and Use Tax Ordinance.....App. 11

APPENDIX E – Sections 150-526, -576, -577, and -578, excerpted from the New Orleans Code App. 14

TABLE OF AUTHORITIES

Page

CASES

Associated Industries of Missouri v. Lohman, 511 U.S. 641 (1994) 9, 10

D.H. Holmes Co. v. McNamara, 486 U.S. 23 (1988) 8

Haliburton Oil Well Cementing Co. v. Reily, 373 U.S. 64 (1963) 8, 9

Nippert v. City of Richmond, 327 U.S. 416 (1946) 8

Saenz, Director, California Dep't of Social Services, et al v. Roe, No. 98-97, 1999 WL 303743 (U.S.) (May 17, 1999) 7, 8

Westinghouse Electric Corp. v. Tulley, 466 U.S. 388 (1984) 8

Williams v. Vermont, 472 U.S. 14 (1985) 7, 8

STATUTES

Natchitoches Parish School Board Sales and Use Tax Ordinance 2, 4, 5

New Orleans Code 4, 5

OPINIONS BELOW

The July 2, 1999 decision of the Supreme Court of Louisiana in *Fitzgerald v. Stalder* is reported at No. 99-1821 (La. 7/2/99); 1999 WL 513705 (La. Jul 02, 1999) (Appendix A). The decision of the Louisiana Court of Appeal for the First Circuit (Appendix B) is reported at 98-0711 (La. App. 1st Cir. 4/1/99), 731 So. 2d 500, and the decision of the trial court (Appendix C) is unpublished.

JURISDICTION

The decisions of the trial court and the Louisiana Court of Appeal for the First Circuit became final on July 2, 1999, when the Louisiana Supreme Court denied the Petitioners' Petition for Writ of Certiorari. This Petition is filed within the time allowed by law, and the jurisdiction of the Court is invoked pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS AND STATUTES

Article I, Section VIII, Clause III:

The Congress shall have Power . . . to regulate commerce . . . among the several States.

Amendment 14, Section 1:

[N]or shall any State . . . deny to any person within its jurisdiction the equal protection of the laws.

Natchitoches Parish School Board Sales and Use Tax Ordinance, Section 2.01:

> There is hereby levied . . . a tax upon the . . . use . . . of tangible personal property within the Parish. . . . [1]

STATEMENT OF THE CASE

The Petitioners sought summary judgment in the Trial Court declaring that the various local taxing authorities in Louisiana have been and are now collecting local use taxes in a manner that violates the Commerce Clause of the Constitution and the Equal Protection Clause of the Fourteenth Amendment. The Petitioners also sought relief in the form of an order for the refund of these taxes. The Trial Court denied the Petitioners' motion, rendering, instead, summary judgment in favor of one of the local taxing authorities, the Natchitoches Parish School Board, and holding that the facts of this case gave rise to no constitutional violation. The Petitioners appealed the grant of Summary Judgment in favor of the Natchitoches Parish School Board. The Louisiana Court of Appeal for the First Circuit affirmed the Trial Court's judgment, and

[1] Each local taxing jurisdiction in Louisiana that imposes a use tax does so on the same basis as does the Natchitoches Parish School Board, except for the rate of the tax.

the Supreme Court of Louisiana denied the Petitioners' application for a writ of certiorari.[2]

REASONS FOR GRANTING THE WRIT

This case involves a challenge to the manner in which use taxes are collected by the local taxing authorities in Louisiana. Only taxes levied by local authorities are at issue (*i.e.*, use taxes imposed by the various parishes, cities, towns, school boards, and other such local authorities – these local taxes are distinct from the similar taxes imposed by the State of Louisiana, which are not involved here). More specifically, although these taxes apply to all types of tangible personal property, this case relates only to those taxes as they apply to various types of vehicles that must be registered with the State (as an

[2] The only substantial issues in this case involve the Equal Protection Clause and Commerce Clause. The Petitioners raised these issues when they originally filed this case and when they filed their "First Supplemental, Amended and Restated Petition for Refund of Use Taxes and for Attorneys Fees". They raised the issues again in "Plaintiffs' Motion for Summary Judgment" and the brief attached thereto, and in "Plaintiffs' Opposition to Defendant's Motion for Summary Judgment" (part of their argument was referenced in the trial court's opinion (Appendix C)). The Petitioners reiterated their constitutional arguments in their "Original Brief by Plaintiffs-Appellants, Leslie Fitzgerald, Elizabeth Harling, and Charles Huggins" filed in the Louisiana Court of Appeal for the First Circuit (the arguments are referred to in the opinion by the Court of Appeal (Appendix B)), and in their "Petition for Writ of Certiorari or Review on Behalf of Leslie Fitzgerald, et al., Plaintiffs-Applicants" filed in the Louisiana Supreme Court.

administrative matter, the Vehicle Commissioner of the State of Louisiana collects these taxes as agent for the various local taxing authorities, and he does so when the vehicles are presented for registration).

Nearly every local taxing authority in Louisiana has chosen to employ sales and use taxes as a source of revenue. Each of these authorities imposes its own taxes independently of the other political subdivisions of the State, and they do so at rates that vary from one jurisdiction to another. The City of Natchitoches, for example, imposes its taxes at the rate of 2½%, while the City of New Orleans levies a 5% tax.[3] At least one local authority, however, does not impose this type of tax at all (Cameron Parish imposes no sales or use taxes).

Because the taxes imposed by the various local authorities are independent exactions, they apply only to transactions that take place within the geographic limits of the respective taxing jurisdictions. The tax levied by the Natchitoches Parish School Board, for example, would accrue when a person imports an item of "tangible personal property" (such as a motor vehicle) for use within the confines of that jurisdiction. Natchitoches Parish School Board Sales and Use Tax Ordinance, Section 2.01. Likewise, a person would become liable for the tax imposed by the City of New Orleans when he imports property for use in that city. New Orleans Code, Art. VI, Sections 150-576 and 150-578. Accordingly, a Texas resident who moves to New Orleans and imports a vehicle

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[3] These percentages represent the cumulative rates charged by the various local taxing authorities within these cities.

for use there would become liable for a New Orleans use tax equal to 5% of his vehicle's value. The same would be true of a current Louisiana resident who imports an identical vehicle when he moves to New Orleans from elsewhere in the State, such as Natchitoches. Again, these taxes apply any time a person imports property for use in a local taxing jurisdiction, and without regard to whether he imports the property from another local jurisdiction in Louisiana or from another State.[4]

Notwithstanding the fact that both current residents and new residents would be liable for the same taxes, the local taxing authorities in Louisiana openly admit that, as a matter of policy, they enforce their taxes only against persons who move into their jurisdictions and import property from other States; they never enforce them against current Louisiana residents who move into the

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[4] Because the local taxing authorities adopted the use taxes at issue here in order to complement their related sales taxes, one might expect that a person who imports property into a local jurisdiction would be liable for that jurisdiction's use taxes only to the extent they exceed the sales taxes he paid elsewhere. In fact, each of the local tax ordinances in Louisiana embraces this expectation by expressly requiring tax credits for taxpayers who paid similar taxes in other jurisdictions. *See, e.g.*, Natchitoches Parish School Board Sales and Use Tax Ordinance, Section 5.03 and New Orleans Code, Art. VI, Section 150-526. Notwithstanding this requirement, the local taxing authorities, as a matter of custom and policy, do not grant such credits. As a practical matter, therefore, the fact that a person might have paid a local sales tax when he purchased a vehicle in one local taxing jurisdiction has no bearing on his liability for an additional use tax when he later moves to another jurisdiction, regardless of whether the taxpayer moved from elsewhere in Louisiana or from another state.

same jurisdictions and import property from elsewhere in the State.

Assume, for example, that a current resident moves into New Orleans from another local jurisdiction in the State, and that another person moves into the city from Texas. Assume also that each of these persons imports a vehicle worth $20,000. The person who moved from Texas would be required to pay local use taxes at the rate of 5%, or in the amount of $1,000 (as noted above, the New Orleans authorities would assess the full amount of this tax even if the new resident had already paid a similar tax in Texas, for which they grant no credit). The person who moved from another Louisiana political subdivision, however, would not be required to pay any local use taxes in New Orleans at all, even though the governing ordinances would impose on him exactly the same liability (and even if he had not paid any similar local taxes elsewhere in Louisiana). In other words, the new resident who moved from Texas would be required to pay taxes that the current Louisiana resident would avoid, and he would have to do so simply because he imported his vehicle from another State.

The Petitioners, who were required to pay such taxes when they moved from other States, were aggrieved by this practice which, according to the established jurisprudence of this Court, violates the Commerce Clause of the Constitution and the Equal Protection Clause of the Fourteenth Amendment.

I. The Equal Protection Clause Violation

The Equal Protection Clause of the Fourteenth Amendment to the Constitution provides that "nor shall any State . . . deny to any person within its jurisdiction the equal protection of the laws." The Court invoked this clause in *Williams v. Vermont*, 472 U.S. 14 (1985), to strike down taxes that discriminated among taxpayers on the basis of residence.

Williams involved the constitutionality of a use tax imposed by Vermont upon the registration and use of motor vehicles in that State. This tax was not imposed upon persons who bought cars and paid the related sales taxes in Vermont. Nor was the tax imposed upon Vermont residents who bought cars in other States, paid the related taxes there, and then brought their vehicles into Vermont. Imposition of the tax, therefore, was limited to non-residents who bought their cars in other States prior to moving to Vermont. In light of these facts, the *Williams* Court concluded that Vermont's use tax scheme violated the Equal Protection Clause: "a State may not treat those within its borders unequally solely on the basis of their different residences or States of incorporation." 472 U.S. at 23. (*See also Saenz, Director, California Dep't of Social Services, et al v. Roe*, No. 98-97, 1999 WL 303743 (U.S.) (May 17, 1999), in which the Court held that "the 'right to travel' . . . protects the right of a citizen of one State to enter and leave another State, the right to be treated as a welcome visitor rather than an unfriendly alien when temporarily present in the second State, *and, for those travelers who elect to become permanent residents, the right to be treated like other citizens of that State.*")

This Court's analysis in *Williams* and *Saenz* applies with equal force to the facts of this case. As noted above, the local taxing authorities in Louisiana enforce their use taxes only against persons who move from other States; they never enforce these taxes against persons who move from elsewhere in Louisiana. By so discriminating among taxpayers solely on the basis of their former residence, these authorities are enforcing their taxes in violation of the Equal Protection Clause.

II. The Commerce Clause Violation

The Commerce Clause provides that "the Congress shall have power . . . to regulate commerce with foreign nations, and among the several States, and with the Indian tribes." United States Constitution, Article I, Section 8, Clause 3. The Court consistently has held that this clause prevents the States from imposing taxes that discriminate against interstate commerce, and that this proscription applies even where the Congress has not acted in an affirmative way under its Commerce Clause authority. *See D.H. Holmes Co. v. McNamara*, 486 U.S. 23, 29 (1988). The logical corollary to this fundamental concept is that the Commerce Clause also prohibits the States from enforcing, in a discriminatory manner, tax statutes that are facially neutral. *See, e.g., Westinghouse Electric Corp. v. Tulley*, 466 U.S. 388, 406 (1984); and *Nippert v. City of Richmond*, 327 U.S. 416, 425 (1946).

It is well settled that the Commerce Clause requires equal treatment for similarly-situated taxpayers. For example, the Court held in *Haliburton Oil Well Cementing Co. v. Reily*, 373 U.S. 64 (1963), that "equal treatment for

in-state and out-of-state taxpayers similarly situated is the condition precedent for a valid use tax on goods imported from out of State." 373 U.S. at 70.

The Court later applied the same precept in *Associated Industries of Missouri v. Lohman*, 511 U.S. 641 (1994). The tax scheme under review in *Associated Industries* imposed a series of State sales taxes at the aggregate rate of 4.225% of sales made in Missouri. These taxes corresponded to State use taxes imposed at the same combined rate on goods purchased outside of Missouri but used in the State. In addition to these complementary taxes, Missouri imposed a separate 1½% State use tax on goods purchased outside the State. The *Associated Industries* Court found that the additional tax unconstitutionally discriminated against interstate commerce because goods imported from other States were subject to a higher tax than were goods purchased in Missouri:

> Where the use tax exceeds the sales tax, the discrepancy imposes a discriminatory burden on interstate commerce. Out-of-State goods brought into such a jurisdiction are subjected to a higher levy than goods sold locally. The resulting disparity is incompatible with what we have termed the "strict rule of equality" adopted in *Silas Mason* [300 U.S. 577 (1937)]. 511 U.S. at 649.

The local taxing authorities in Louisiana are collecting their use taxes in a manner that results in such a disparity. The point can best be illustrated by comparing the local sales and use taxes that a current Louisiana resident pays when he buys a car in one local jurisdiction and then moves to another jurisdiction within the State, on the one hand, and the local use taxes that a non-

resident pays when he moves into the latter jurisdiction from another State.

As noted above, the local jurisdictions in Louisiana that impose sales and use taxes do so at significantly different rates. In fact, at least one jurisdiction (Cameron Parish) imposes no sales or use taxes at all. The local sales and use tax rates in Louisiana, therefore, range from zero to 5%.

Assume that a Louisiana resident purchases a car when he lives in Cameron Parish, and that he later decides to move to New Orleans. Assume also that a Texas resident moves to New Orleans at the same time. Finally, assume that these persons bring with them identical vehicles worth $20,000. Although both of these persons would owe the same local use taxes to the authorities in New Orleans, only the person who moved from Texas would be required to pay them. The current Louisiana resident would be able to avoid his liability simply because of his status as a resident. Moreover, he would have paid no local sales taxes when he bought his car, because Cameron Parish imposes no such exaction. In effect, therefore, the person who moved from Texas would be required to pay $1,000 more in local use taxes than the current Louisiana resident would have paid in local sales taxes. This result cannot be squared with the standard enunciated in *Associated Industries*.

III. The Lower Courts' Error

The lower courts held that the local taxing authorities are not unlawfully discriminating against taxpayers on the basis of residence because current Louisiana residents

are required to pay local *sales* taxes when they buy vehicles in their local jurisdictions, and non-residents are required to pay local *use* taxes in a corresponding amount when they import vehicles into the same jurisdictions from other States:

> When registering a vehicle for the first time in Louisiana, the new resident pays the same amount of local use tax as the long-time resident pays in sales tax. Thus, the sales and use taxes are complementary and non-discriminatory. *Fitzgerald v. Stalder*, 98-0711 (La. App. 1 Cir. 4/1/99), 731 So.2d 500, 501. Appendix B.

The Petitioners agree that Louisiana's local sales and use tax scheme, as drafted, creates no unconstitutional disparity between the treatment of a current Louisiana resident who buys a car in a local jurisdiction of the State and a non-resident who imports a car into the same jurisdiction from another State. Each of those persons would be required to pay the same amount of sales and/or use taxes – the current resident would pay a local sales tax when he buys a car in the local jurisdiction, and the non-resident would pay a corresponding local use tax when he moves into that jurisdiction and imports a car for use there. For example, a Louisiana resident who lives in New Orleans and buys a car for $20,000 in the city will be required to pay a local sales tax of $1,000 (*i.e.*, 5% of the purchase price). Likewise, a non-resident who moves to New Orleans from Texas will be required to pay a corresponding use tax in the same amount when he imports an identical car for use in the city.

Yet, by comparing only the application of a local tax on the purchase of property within a taxing jurisdiction

with the imposition of a local tax on the use of property bought outside of that jurisdiction and later imported for use there, the lower courts merely acknowledged the intended complementary nature of the sales and use tax scheme, as drafted. The validity of that acknowledgment, however, rests upon the even-handed enforcement of these related exactions against all persons who import property for use in the taxing jurisdictions, and without regard to whether they imported the property when they moved from other local jurisdictions in Louisiana or whether they did so when they moved from other States. The designed symmetry in the scheme, therefore, is meaningless as a reference point when the use tax is not so enforced. It is this defect in practice which the lower courts ignored and which gives rise to the unconstitutional disparity complained of here.

Assume again that two persons move into the City of New Orleans and import identical vehicles for use there. Assume further that one of these persons moved from Texas, and that the other was a current Louisiana resident who moved from elsewhere in the State. Although the person who moved from Texas would be required to pay local use taxes to the authorities in New Orleans, the current Louisiana resident would not be required to pay any such taxes at all (even if he never paid any local sales taxes when he purchased his car in his previous domicile). By distinguishing between these persons solely on the basis of their different States of residence, the local taxing authorities in Louisiana are violating both the Commerce Clause of the Constitution and the Equal Protection Clause of the Fourteenth Amendment.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A

The Supreme Court of the State of Louisiana

LESLIE FITZGERALD, ELIZABETH HARLING, CHARLES HUGGINS AND ALL SIMILARLY SITUATED CLASS MEMBERS — NO. 99-C – 1821

VS.

RICHARD STALDER, INDIVIDUALLY AND IN HIS CAPACITY AS SECRETARY, LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS, JOHN POLITZ, INDIVIDUALLY, IN HIS CAPACITY AS THE ADMINISTRATOR OF THE OFFICE OF MOTOR VEHICLES, AND IN HIS CAPACITY AS THE VEHICLE COMMISSIONER OF THE STATE OF LOUISIANA ET AL

IN RE: Fitzgerald, Leslie; Harling, Elizabeth; Huggins, Charles; – Plaintiff(s); Applying for Writ of Certiorari and/or Review; Parish of East Baton Rouge 19th Judicial District Court Div. "I" Number 401,895; to the Court of Appeal, First Circuit, Number 98 CA 0711

July 2, 1999

Denied.

HTL
PFC
WFM
CDK

JPV
CDT
JTK
JOHNSON, J. not on panel.

Supreme Court of Louisiana

July 2, 1999

/s/ Illegible
Clerk of Court
For the Court

APPENDIX B

STATE OF LOUISIANA
COURT OF APPEAL
FIRST CIRCUIT

NUMBER 98 CA 0711

LESLIE FITZGERALD, ELIZABETH HARLING, CHARLES HUGGINS AND ALL SIMILARLY SITUATED CLASS MEMBERS

VERSUS

RICHARD STALDER, INDIVIDUALLY AND IN HIS CAPACITY AS SECRETARY, LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS, JOHN POLITZ, INDIVIDUALLY, IN HIS CAPACITY AS THE ADMINISTRATOR OF THE OFFICE OF MOTOR VEHICLES, AND IN HIS CAPACITY AS THE VEHICLE COMMISSIONER OF THE STATE OF LOUISIANA, ET AL.

JUDGMENT RENDERED: April 1, 1999

* * *

Appealed from the 19th Judicial District Court
in and for East Baton Rouge Parish, Louisiana
Trial Court No. 401,895
Honorable R. Michael Caldwell, Judge

J. Patrick Hennessy
Frederick R. Parker, Jr.
Shreveport, LA

Matthew J. Ungarino
Metarie, LA

Attorneys for Plaintiffs/
Appellants

Attorney for Defendant/
Appellee Natchitoches
Parish School Board

BEFORE: CARTER, C.J., SHORTESS AND WHIPPLE, JJ.

SHORTESS, J.

Leslie Fitzgerald, Elizabeth Harling, and Charles Huggins (plaintiffs) moved to Louisiana from Florida, New Jersey, and California, respectively. Each was required to pay a local use tax when registering his or her vehicle with the State of Louisiana. Plaintiffs sued for a refund of those taxes, naming multitudinous defendants and alleging various theories, all of which have changed over the course of the litigation.

Plaintiffs sought to have themselves certified as representatives of the class of all persons who have brought vehicles into Louisiana from other states and registered them pursuant to the Louisiana Vehicle Registration License Tax law, Louisiana Revised Statute 47:451 through 540. Plaintiffs named nine taxing authorities from Caddo and Natchitoches Parishes in their "First Supplemental, Amended and Restated Petition" and sought to have them certified as representative defendants. Plaintiffs allege in their restated petition that because local use taxes are collected from those who move into Louisiana from other states but are not collected from Louisiana residents who move from one parish or political subdivision to another, the tax-collection process violates the Commerce and Equal Protection Clauses of the United States Constitution. Plaintiffs contend they are entitled to damages equal to the amount of taxes they paid and attorney fees under 42 U.S.C. §§ 1983 and 1988.

Plaintiffs moved to certify the class. They also moved for summary judgment. One of the putative-representative defendants, the Natchitoches Parish School Board

(defendant), also moved for summary judgment. The trial court denied plaintiffs' motions for class certification and summary judgment but granted defendant's motion for summary judgment, dismissing plaintiffs' claims against it. Plaintiffs' motion for new trial on the class certification was denied. Plaintiffs applied for supervisory writs on the denial of their motions and, after the trial court certified it as final, appealed the judgment dismissing defendant. The issues raised in plaintiffs' writ are addressed in our decision rendered this date under docket number 98 CW 0384. This appeal addresses only the propriety of granting defendant's motion for summary judgment.

Plaintiffs contend the Commerce and Equal Protection Clauses are violated when someone who moves into Louisiana is forced to pay a local use tax, while a Louisiana resident who moves from one taxing jurisdiction in Louisiana to another pays no use tax. Defendant, on the other hand, contends plaintiffs are comparing the wrong two events. The trial court agreed, stating plaintiffs were "attempting to compare apples and oranges." The trial court found the "apples-to-apples" comparison was made by looking at what occurs when a vehicle is registered in this state for the first time, whether by a Louisiana resident or by one who has just moved here. The Louisiana resident pays a local sales tax, while the person who moves into the state pays a comparable use tax. Thereafter, the vehicles are treated identically if they are moved to another taxing jurisdiction within the state, i.e., no local use tax is collected.

The Commerce Clause has long been understood to deny the States the power to discriminate unjustifiably

against or burden the interstate flow of articles of commerce.[1] The first step to analyzing any law subject to judicial scrutiny under the Commerce Clause is to determine whether it regulates evenhandedly with only incidental effects on interstate commerce, or whether it discriminates against interstate commerce. "Discrimination" as used in this context means simply the differential treatment of in-state and out-of-state economic interest that benefits the former and burdens the latter.[2]

Even if the law is facially discriminatory because it imposes a burden on interstate commerce, if [sic] does not offend the Commerce Clause if a complementary, i.e., an identifiable and substantially similar, burden is imposed on intrastate commerce.[3] The "prototypical example" of complementary burdens are sales and use taxes.[4]

We agree with the trial court that when an "apples-to-apples" comparison is made, no discrimination is shown. The first-time registration by someone moving into the state is the only action herein that affects interstate commerce. When registering a vehicle for the first time in Louisiana, the new resident pays the same amount of local use tax as the long-time resident pays in sales tax. Thus, the sales and use taxes are complementary and non-discriminatory. Plaintiffs have failed to

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[1] Oregon Waste Systems v. Dep't of Envtl. Quality, 511 U.S. 93, 98 (1994).

[2] Id. at 99.

[3] Id. at 103.

[4] Id. at 105.

show discrimination affecting interstate commerce, and the trial court correctly granted summary judgment in defendant's favor. for these reasons, the judgment of the trial court is affirmed at plaintiffs' cost.

AFFIRMED.

APPENDIX C

LESLIE FITZGERALD, ET AL	NO. 401,895 DIVISION "I"
VS.	19TH JUDICIAL DISTRICT COURT
RICHARD STALDER, ET AL	PARISH OF EAST BATON ROUGE
	STATE OF LOUISIANA

ORAL REASONS FOR JUDGMENT
TUESDAY, JANUARY 20, 1998
THE HONORABLE R. MICHAEL CALDWELL,
JUDGE PRESIDING

WE HAVE BEFORE US TODAY A MOTION FOR SUMMARY JUDGMENT FILED BY THE NATCHITOCHES PARISH SCHOOL BOARD. ADDRESSED IS THE ISSUE OF – WELL, BOTH THE ISSUE OF LIABILITY AS A MATTER OF LAW AND AS TO WHETHER IT IS A PROPER DEFENDANT, GIVEN ITS AGENCY RELATIONSHIP WITH THE STATE, WHO IS THE COLLECTING AGENCY.

AS MR. HENNESSY POINTED OUT IN HIS ARGUMENT, LOCALS DON'T HAVE ANYTHING TO DO WITH COLLECTING THE TAX, IT IS ALL THE STATE.

BUT, THE COURT HAS REVIEWED, WITH INTEREST, THE DECISION OF THE UNITED STATES SUPREME COURT IN THE HALLIBURTON OIL WELD CASE. I KNOW IT'S A RELATIVELY OLD CASE; IT DOES ADDRESS VERY SIMILAR ISSUES AS THEY ARE APPLIED UNDER THE COMMERCE CLAUSE OF THE U. S. CONSTITUTION. THE COURT POINTS OUT IN THAT CASE THAT, IN EACH CASE, IT IS THE COURT'S

DUTY TO DETERMINE WHETHER THE STATUTE UNDER ATTACK WILL, IN ITS PRACTICAL OPERATION, WORK DISCRIMINATION AGAINST INTERSTATE COMMERCE. THE COURT ALSO NOTED THAT EQUALITY, FOR THE PURPOSES OF COMPETITION IN THE FLOW OF COMMERCE, IS MEASURED IN DOLLARS AND CENTS, NOT LEGAL ABSTRACTIONS. AND IN HIS CONCURRING OPINION, JUSTICE BRENNAN POINTS OUT THAT, IN PRIOR DECISIONS, the COURT HAD INTIMATED THAT A STATE MAY NOT BE CONSTITUTIONALLY OBLIGATED TO CREDIT THE AMOUNT OF SALES TAX PAID IN OTHER STATES AGAINST THE USE TAX IT IMPOSES AND, ACCORDINGLY, THE CONSTITUTION DOES NOT MANDATE ABSOLUTE EQUALITY OF TREATMENT AS BETWEEN IN-STATE AND OUT-OF-STATE SALES, IT MERELY FORBIDS DISCRIMINATORY TREATMENT BY THE STATES.

AND I BELIEVE IN THIS CASE, IN THE ALLEGATIONS THAT ARE MADE, THE PLAINTIFFS ARE ATTEMPTING TO COMPARE APPLES AND ORANGES. I THINK THE APPLES-TO-APPLES IS THE TAXING EVENT, NOT THE TAX LIABILITY. PLAINTIFFS HAVE ADMITTED, AND THE EVIDENCE DISCLOSES, THAT NO TAXES COLLECTED ON THE MOVEMENT OF VEHICLES WITHIN THE STATE; OF COURSE, THAT'S THEIR COMPLAINT. THE ONLY TAXES COLLECTED IS ON THE FIRST REGISTRATION IN THE STATE; AND I THINK THAT'S WHAT WE HAVE TO COMPARE. IN COMPARING THOSE, THE SALES TAX, THE COMPLIMENTARY TAX OF THE USE TAX IS COLLECTED FROM IN-STATE RESIDENTS AND THE LOCAL SALES

TAX FOR THE PARISH OF RESIDENCE OF THE PURCHASER OF THAT VEHICLE IS COLLECTED BY THE STATE AT THAT TIME. WHEN A VEHICLE IS BROUGHT IN FROM OUT OF STATE AND REGISTERED FOR THE FIRST TIME IN THE STATE OF LOUISIANA, THE COMPLIMENTARY LOCAL USE TAX FOR THE PARISH OF THAT PERSON'S RESIDENCE WHEN THEY MOVE INTO THE STATE OF LOUISIANA IS COLLECTED BY THE STATE. THOSE ARE COMPARABLE EVENTS THAT APPEAR FORM THE EVIDENCE TO BE APPLIED EQUALLY TO THE OUT-OF-STATE RESIDENT AND THE IN-STATE RESIDENT. FOR THAT REASON, THE COURT IS GOING TO GRANT THE MOTION FOR SUMMARY JUDGMENT AND ALLOW PLAINTIFFS TO TAKE THAT UP ON APPEAL IN CONNECTION WITH, IF THEY WISH, IN CONNECTION WITH THEIR WRIT, OR ON DIRECT APPEAL. BECAUSE I BELIEVE THE GRANTING OF THE MOTION FOR SUMMARY JUDGMENT IS APPEALABLE; AND IF A DECLARATION IS REQUIRED THAT THIS JUDGMENT IS APPEALABLE, THEN IN ACCORDANCE WITH THE RECENT AMENDMENTS TO THE CODE OF CIVIL PROCEDURE, THE COURT MAKES THAT DECLARATION. AND THE COURT DENIES THE MOTION FOR SUMMARY JUDGMENT FILED BY THE PLAINTIFFS.

* * *

FILED
FEB 17 1997
/s/ Frances Spruill
Deputy Clerk

APPENDIX D

IMPOSITION OF TAX

Section 2.01. There is hereby levied from and after August 1, 1983, for the purposes stated in the proposition set forth in the preamble to this Ordinance, a tax upon the sale at retail, the use, the lease or rental, the consumption, and storage for use or consumption, of tangible personal property and on sales of services within the Parish as defined herein; and the levy of such tax shall be as follows:

(1) At the rate of one percent (1%) of the sales price of each item or article of tangible personal property when sold at retail in the Parish, the tax to be computed on gross sales for the purpose of remitting the amount of tax due the Parish School Board, and to include each and every retail sale.

(2) At the rate of one percent (1%) of the cost price of each item or article of tangible personal property when the same is not sold, but is used, consumed, distributed, or stored for use or consumption in the Parish, provided there shall be no duplication of the tax.

(3) At the rate of one percent (1%) of the gross proceeds derived from the lease or rental of tangible personal property, as defined herein, where the lease or rental of such property is an established business, or part of an established business, or the same is incidental or germane to the said business.

(4) At the rate of one percent (1%) of the monthly lease or rental price paid by lessee or rentee, or contracted or agreed to be paid by lessee or rentee to the owner of the tangible personal property.

(5) At the rate of one percent (1%) of the gross proceeds derived from the sale of services, as defined herein.

* * *

Section 5.03. A credit against the use tax imposed by this Ordinance shall be granted to taxpayers who have paid a similar tax upon the sale or use of the same tangible personal property in another Municipality or Parish in the State of Louisiana, or Municipality or County in a state other than Louisiana. The credit provided herein shall be granted only in the case where the Municipality or Parish in the State of Louisiana, or the Municipality or County in a state other than Louisiana, to which a similar tax has been paid grants a similar credit as provided herein, provided that members of the armed forces who are residents of the Parish and whose orders or enlistment contracts stipulate a period of active duty of two years or more and who purchase automobiles outside of the Parish, in a Municipality or Parish in the State of Louisiana, or a Municipality or County in a state other than Louisiana while on such tour of active duty shall be granted such credit in connection with the purchase of such automobiles whether or not the Municipality or Parish in the State of Louisiana, or the Municipality or County in a state other than Louisiana to which such tax thereon has been paid grants a similar credit as herein provided. The proof of payment of a

similar tax to another Municipality or Parish in the State of Louisiana, or to a Municipality or County in a state other than Louisiana shall be made according to rules and regulations promulgated by the Collector. In no event shall the credit be greater than the tax imposed by the Parish School Board upon the particular tangible personal property which is the subject of the use tax imposed by this Ordinance.

* * *

APPENDIX E

DIVISION 4. IMPOSITION

Sec. 150-576. Imposition of tax.

(a) There is hereby levied, for general municipal purposes, a tax upon the sale at retail, the use, the consumption, the distribution and the storage for use or consumption in the city of each item or article of tangible personal property, upon the lease or rental of such property and upon the sale of services within the city, provided that this tax shall not be applicable to banquet gratuities, tips or gifts for distribution in total to restaurant service personnel which are included as a separate item on restaurant bills, the levy of such tax to be as follows:

(1) At the rate of 2½ percent of the sales price of tangible personal property when sold at retail in the city;

(2) At the rate of 2½ percent of the cost price of tangible personal property when it is not sold, but is used, consumed, distributed or stored for use or consumption in the city, except that there shall be no duplication of the tax;

(3) At the rate of 2½ percent of the amount paid or charged for the lease or rental of tangible personal property, when the lease or rental of such property is an established business or part of an established business or is incidental or germane to any such business;

(4) At the rate of 2½ percent of the lease or rental price paid by a lessee or rentee or contracted or agreed to be paid by a lessee or rentee to the owner of tangible personal property;

(5) At the rate of 2½ percent paid or charged upon the sale of services.

(b) Reserved.

(Code 1956, § 56-21)

State law reference – Similar provisions, R.S. 47:302.

Sec. 150-577. Tax in addition to others.

The tax levied by this article is in addition to all other taxes whether levied in the form of excise, license or privilege taxes levied by any other city ordinance.

(Code 1956, § 56-22)

State law reference – Similar provisions, R.S. 47:302(C).

Sec. 150-578. Use, etc., equivalent to sale.

(a) The tax imposed under R.S. 47:302 shall be collectible from all persons, as hereinafter defined, engaged as dealers, as hereinafter defined.

(b) On all tangible personal property imported, or caused to be imported, from other states or other political subdivisions of this state or a foreign country and used by dealer, the dealer, as thus defined, shall pay the tax imposed by this article on all articles of tangible personal property so imported and used, the same as if such article had been sold at retail for use or consumption in this city. For the purpose of this article, use, or consumption, or distribution or storage to be used or consumed in this city of tangible personal property shall each be equivalent to a sale at retail, and the tax shall thereupon immediately levy and be collected in the manner provided herein;

provided, that there shall be no duplication of the tax in any event.

(c) a credit against the use tax imposed by this article shall be granted to taxpayers who have paid a similar tax upon the sale or use of the same tangible personal property in another state. The credit provided herein shall be granted only in the case where the state to which a similar tax has been paid grants a similar credit as provided herein, provided that members of the armed forces who are citizens of this state and whose orders or enlistment contracts stipulate a period of active duty of two years or more and who purchase automobiles outside of this city while on such tour of active duty shall be granted such credit in connection with the purchase of such automobiles whether or not the state to which such tax thereon has been paid grants a similar credit as herein provided. The amount of the credit shall be calculated by multiplying the rate of the similar tax paid in the other state by the cost price which is subject to this city's use tax at the time of the importation of the tangible personal property. The proof of payment of a similar tax to another state shall be made according to rules and regulations promulgated by the director of the department of finance. In no event shall the credit be greater than the tax imposed by this city upon the particular tangible personal property which is the subject of this city's use tax.

(Code 1956, § 56-23)

Sec. 150-526. Credit for similar tax paid in another state or in another parish or municipality of this state.

The provisions of this article shall not apply in respect to the use, consumption, distribution or storage of tangible personal property upon which a like tax equal to or greater than the amount imposed by this chapter has been paid in a state other than this state or to any other parish or municipality of the state, the proof of the payment of such tax to be according to rules and regulations made by the director. If the amount of tax paid in a state other than this state or in any other parish or municipality of the state is in an amount less than the amount of tax imposed by this article, the dealer shall pay to the director an amount equivalent to the difference between the total tax as imposed by this article and the amount paid to such other taxing jurisdiction.

(Code 1956, § 56-31)